MONTANA LEGISLATIVE HISTORY

Chapter 244 ~~19~~ 2005

Bill H _____ S 286 Original bill & history X C

H. Committee on BUSINESS & LABOR			S. Committee on BUSINESS & LABOR		
Hearing Date(s)	3/23	X C	Hearing Date(s)	2/1	X C
& EXEC ACTION		C	EXEC. ACTION	2/4	X C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

Bill Draft Number: LC1049
Bill Type - Number: SB 286
Short Title: Revise construction payment laws
Primary Sponsor: Don Ryan

Bill Actions - **Current Bill Progress:** Became Law

Bill Action Count: 50

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/15/2005			
(S) Signed by Governor	04/15/2005			
(S) Transmitted to Governor	04/06/2005			
(H) Signed by Speaker	04/06/2005			
(S) Signed by President	04/04/2005			
(S) Returned from Enrolling	04/04/2005			
(C) Sent to Printing	04/04/2005			
(S) Sent to Enrolling	04/01/2005			
(H) Returned to Senate	04/01/2005			
(H) 3rd Reading Concurred	04/01/2005	82	18	
(H) Scheduled for 3rd Reading	04/01/2005			
(H) 2nd Reading Concurred	03/31/2005	91	7	
(H) Scheduled for 2nd Reading	03/31/2005			
(H) Scheduled for 2nd Reading	03/30/2005			
(H) Committee Report--Bill Concurred	03/24/2005			(H) Business and Labor
(H) Committee Executive Action--Bill Concurred	03/23/2005	18	0	(H) Business and Labor
(H) Hearing	03/23/2005			(H) Business and Labor
(H) Hearing Canceled	03/16/2005			(H) Business and Labor
(H) Referred to Committee	03/03/2005			(H) Business and Labor
(H) First Reading	03/03/2005			
(S) Transmitted to House	02/11/2005			
(S) 3rd Reading Passed	02/11/2005	49	0	
(S) Scheduled for 3rd Reading	02/11/2005			
(C) Sent to Printing	02/10/2005			
(S) 2nd Reading Passed as Amended on Voice Vote	02/10/2005	50	0	
(S) 2nd Reading Motion to Amend Carried on Voice Vote	02/10/2005	50	0	
(S) 2nd Reading Motion to Amend Carried on Voice Vote	02/10/2005	50	0	

(S) Scheduled for 2nd Reading	02/10/2005			
(S) Scheduled for 2nd Reading	02/09/2005			
(C) Sent to Printing	02/07/2005			
(S) Committee Report--Bill Passed as Amended	02/07/2005			(S) Business, Labor, and Economic Affairs
(S) Committee Executive Action--Bill Passed as Amended	02/07/2005	10	0	(S) Business, Labor, and Economic Affairs
(S) Hearing	02/01/2005			(S) Business, Labor, and Economic Affairs
(C) Introduced Bill Text Available Electronically	01/24/2005			
(S) Referred to Committee	01/24/2005			(S) Business, Labor, and Economic Affairs
(S) First Reading	01/24/2005			
(S) Introduced	01/24/2005			
(C) Draft Delivered to Requester	01/20/2005			
(C) Draft Ready for Delivery	01/20/2005			
(C) Draft in Assembly/Executive Director Review	01/18/2005			
(C) Draft in Final Drafter Review	01/18/2005			
(C) Bill Draft Text Available Electronically	01/18/2005			
(C) Draft in Input/Proofing	01/18/2005			
(C) Draft to Drafter - Edit Review [CMD]	01/18/2005			
(C) Draft in Edit	01/17/2005			
(C) Draft in Legal Review	01/17/2005			
(C) Draft On Hold	01/07/2005			
(C) Draft to Requester for Review	12/09/2004			
(C) Draft to Requester for Review	12/09/2004			
(C) Draft Request Received	11/17/2004			

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name Mi
Requester	Ryan	Don
Drafter	Campbell	Bart
Primary Sponsor	Ryan	Don

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Contracts (see also: Public Contracts)		Simple	CONT
Trade Regulations and Competition		Simple	TRAD

Additional Bill Information

Probable Fiscal Note: No
Preintroduction Required: N
Session Law Ch. Number: 244
DEADLINE
Category: General Bills
Transmittal Date: 03/01/2005
Return (with 2nd house amendments) Date: 04/06/2005

Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	01-OCT-05	

SENATE BILL NO. 286

INTRODUCED BY D. RYAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT, WITH RESPECT TO PUBLIC CONSTRUCTION CONTRACTS, CERTAIN NOTICE REQUIREMENTS PERTAINING TO BRINGING AN ACTION AGAINST A CONTRACTOR'S SECURITY DO NOT APPLY TO SUBCONTRACTORS; ELIMINATING THE REQUIREMENT ON NONPUBLIC CONSTRUCTION CONTRACTS THAT A PERSON RESPONSIBLE FOR CONSTRUCTION PAYMENTS TO A CONTRACTOR OR SUBCONTRACTOR MUST BE INFORMED THAT INTEREST ACCRUES ON LATE CONSTRUCTION PAYMENTS; REDUCING THE AMOUNT OF RETAINAGE ON NONPUBLIC CONSTRUCTION CONTRACTS FROM 10 PERCENT TO 5 PERCENT; AND AMENDING SECTIONS 18-2-206, 28-2-2104, AND 28-2-2110, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 18-2-206, MCA, is amended to read:

"18-2-206. Notice to contractor concerning subcontractor. (1) (a) A person, ~~firm, or corporation furnishing provender,~~ other than a subcontractor, who provides provisions, materials, or supplies to a contractor, contractor's agent, or subcontractor of the contractor to be used in ~~the construction, performance, carrying on, prosecution, or doing of any~~ work being done for the state or any county, city, town, district, municipality, or other public body shall, not later than 30 days after the date of the first delivery ~~to a subcontractor or agent of a person, firm, or corporation having a subcontract for the construction, performance, carrying on, prosecution, or doing of the work~~, give a notice of a right of action on the security provided for in 18-2-201 to the contractor or the contractor's agent.

(b) A subcontractor of the contractor is not subject to the notice provisions of this section but is subject only to the notice provisions under 18-2-204.

(2) (a) The notice must be delivered personally or sent by certified mail to the contractor or the contractor's agent.

(b) The notice must be in writing and state:

(i) that it is a notice of a right of action on the security;

(ii) that the person~~, firm, or corporation~~ giving the notice has commenced ~~to deliver provender,~~ delivering

provisions, materials, or supplies;

(iii) the name of the ~~subcontractor or~~ contractor, contractor's agent, or subcontractor of the contractor who placed the order or to whom the ~~provender,~~ provisions, materials, or supplies were delivered; and

(iv) that a right of action exists against the contractor and that the contractor's security will be held for the unpaid price if the ~~supplier~~ person supplying the provisions, materials, or supplies is not paid.

(3) To have a right of action against the contractor and the security under this part, ~~a person, firm, or corporation shall give~~ the written notice ~~required by this section~~ must be in substantially the form described in subsection (2). Any other type of actual or constructive notice is not sufficient.

(4) A suit or action may not be maintained ~~in any court~~ under this section against the ~~contractor or the~~ security of the contractor ~~to recover for the provender, provisions, materials, or supplies or any part thereof~~ unless the provisions of this ~~part~~ section have been complied with."

Section 2. Section 28-2-2104, MCA, is amended to read:

"28-2-2104. Obligations upon delay of payment. (1) If a periodic or final payment that is required by a construction contract to be paid by an owner to a contractor is delayed by more than 30 days from the date the payment is required by the contract to be made, the owner shall pay to the contractor interest, beginning on the day following the date when the payment is due, at the rate of 1 1/2% a month or a pro rata fraction of that amount on the unpaid balance. If the contractor receives interest from the owner for a delayed payment by the owner, the contractor shall ensure that any interest accrued on a delayed payment is distributed by the contractor to subcontractors on a pro rata basis.

(2) If a periodic or final payment required by a subcontract to be paid by a contractor to a subcontractor is delayed for more than 30 days plus 3 working days from the date the payment is required by the subcontract to be made, the contractor shall pay to the subcontractor interest beginning on the day following the date when the payment is due, at the rate of 1 1/2% a month or a pro rata fraction of that amount on the unpaid balance. If a subcontractor receives interest from the contractor for a delayed payment by the contractor, the subcontractor shall ensure that any interest accrued on the delayed payment is distributed by the subcontractor to other subcontractors, if any, on a pro rata basis.

(3) ~~Interest is not required to be paid pursuant to this section unless the owner, contractor, or subcontractor, as appropriate, has been notified of the requirements of this section at the time the request for payment is made.~~ Acceptance of progress payments or final payment releases any claim for interest on the payment."

Section 3. Section 28-2-2110, MCA, is amended to read:

"28-2-2110. Limit on retainage. (1) The maximum retainage applied to construction contracts subject to the provisions of this part may not exceed 5% ~~10% if the construction contractor is performing by the terms of the contract~~.

(2) The retainage percentage withheld by an owner, as provided in subsection (1), from a construction contractor is the maximum retainage that a construction contractor may withhold from a subcontractor.

(3) Retainage must be released upon the substantial completion of each portion of work for which a separate price is stated in the construction contract or upon completion of each portion of work for which the price can be separately ascertained from the contractor's schedule of values."

- END -

MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS, LABOR, AND ECONOMIC AFFAIRS

Call to Order: By **CHAIRMAN VICKI COCCHIARELLA**, on February 1, 2005 at 9:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:
Sen. Vicki Cocchiarella, Chairman (D)
Sen. Joe Balyeat (R)
Sen. Duane Grimes (R)
Sen. Dave Lewis (R)
Sen. Glenn Roush (D)
Sen. Frank Smith (D)
Sen. Carolyn Squires (D)
Sen. Donald J. Steinbeisser (R)
Sen. Bill Tash (R)
Sen. Joseph (Joe) Tropila (D)

Members Excused:
Sen. Jon Tester (D)

Members Absent: None.

Staff Present: Annie Glover, Committee Secretary
Pat Murdo, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:
Hearing & Date Posted: SB 286, 1/27/2005; SB 299, 1/27/2005; SB 238, 1/27/2005; SB 239, 1/27/2005
Executive Action: None.

00:00:00

HEARING ON SB 286

Opening Statement by Sponsor:

SEN. DON RYAN (D), SD 10, opened the hearing on **SB 286,** Revise construction payment laws.

EXHIBIT(bus25a01)

00:01:34
Proponents' Testimony:

Mr. Carl Schweitzer, Subcontractors Association of Montana

EXHIBIT(bus25a02)

Mr. Gary Forrester, Montana Contractors Association

EXHIBIT(bus25a03)

Ms. Margaret Morgan, Treasures State Independent Electrical Contractors
Ms. Katherine Smith, Chief Financial Officer, Dick Anderson Construction
Mr. Keith Allen, International Brotherhood of Electrical Workers

Opponents' Testimony: None.

00:20:29
Informational Testimony:

Mr. Russ Katherman, Architecture and Engineering, Department of Administration

00:20:46
Questions from Committee Members and Responses:

Closing by Sponsor: None.

00:23:39

HEARING ON SB 299

Opening Statement by Sponsor:

SEN. KEN TOOLE (D), SD 41, opened the hearing on **SB 299,** Revise contracting for state services.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 1
DATE 2/1/05
BILL NO. SB 286

Explanation for SB 286

There are 3 sections in SB 286 and the following explains each of the sections.

Section 1 Amendments

Under current law there are two timetables for first-tier subcontractors, second-tier and below subcontractors and suppliers to file a "notice" on any security furnished by a general contractor doing a public works job. A first-tier subcontractor (a subcontractor with a contract with a general contractor) has up to 90 days after completion of the contract to file a notice. The provision for this 90 day time frame is found in 18-2-204 MCA.

A second tier subcontractor (and lower tier subcontractors) and suppliers currently have "not later than 30 days after the date of first delivery" to file a notice. The problem with this timetable is that most second tier and below subcontractors are not aware that on every public works job they do, they should file this notice at the beginning of the job to insure that they will get paid. Most suppliers have enough experience that they routinely file these notices at the beginning of every job. But most subcontractors don't file these notices, and then when they learn 60 to 90 days (after they haven't been paid) that they should have filed the notice to have a right against the general contractor's security, it is too late and they are out payment.

The amendments in Section 1 change the time frame that second tier subcontractors (and lesser tier subs) have to file the notice to the same time frame that a first tier subcontractor has which is 90 days after completion of the contract. Suppliers would still have to file up to 30 days from date of first delivery.

Section 2 Amendment

Section 28-2-2104 is a section of law that allows a general contractor or a subcontractor to charge interest if their payment for work is delayed by more than 30 days from the date the payment is required to be paid. The language which is stricken said that interest could only be charged and collected if the contractor notified the payer that this section of law exists -- the section that allows interest to be charged.

I am removing the language of notifying those that owe payment, because the Montana Construction Payment laws have existed for over 6 years and those that owe money should now be well aware of the payment laws and should not have to be notified of their existence.

Also, in other sections of the Montana Construction Payment Act there is a specific timetable and process for owners to pay for construction work and to not pay for work that they have not approved. Therefore, if an owner has approved work and hasn't paid for it, then a general contractor or a subcontractor should be able to collect interest on delayed payment.

Section 3 Amendment and new subsection

The amendment in the first subsection changes the amount of retainage that can be held on a construction project from 10% to 5%. About 6 years ago the legislature passed a legislation setting retainage on public works at 5%. The amendments in this subsection set the maximum retainage on private work and other public works that fall under this act at 5%. Only residential construction projects which are $400,000 or less in value are excluded from this act

The new language in subsection 3, says when retainage should be paid. Basically, when a subcontractor has completed all their work and it has been approved, then they should have their retainage paid. Currently, most owners wait until the entire project is completed and then pays retainage. For some subcontractors who completed their work months and some times years in advance of a construction project being completed, the wait for retainage payment can be a long and painful experience. It is long and painful because retained funds are the contractors profit on the job or they still need to pay off an operating or equipment loan.

Both the change to 5% and the subsection that requires that retainage be paid when a contractors work is done, are designed to help the cash flow of Montana contractors and keep them financially sound.

Montana Code Annotated 2003

18-2-204. Right of action on security -- notice. (1) All persons mentioned in 18-2-201 have a right of action in their own name or names on any security furnished under the terms of this part for work done by the laborers or mechanics and for provender, materials, supplies, provisions, or goods supplied and furnished in the work or the making of the improvements. The persons do not have any right of action on the security unless within 90 days after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer, or body acting for the state, county, or municipality or other public body, city, town, or district, the laborer, mechanic or subcontractor, or materialman or person claiming to have supplied provender, materials, provisions, or goods for the prosecution of the work or the making of the improvement presents to and files with the board, council, commission, trustees, or body acting for the state, county, or municipality or other public body, city, town, or district a notice in writing in substance as follows:

"TO (here insert the name of the state, county, or municipality or other public body, city, town, or district):

NOTICE IS HEREBY GIVEN that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or materialman or person claiming to have furnished labor, materials, or provisions for the contract or work) has a claim in the sum of .... dollars (here insert the amount) against the security taken from .... (here insert the name of the principal and name of the person providing the security) for the work of .... (here insert a brief mention or description of the work concerning which the security was taken). (Here to be signed) ...."

(2) The notice must be signed by the person or corporation making the claim or giving the notice. After being presented and filed, the notice is a public record open to inspection by any person.

History: En. Sec. 4, Ch. 20, L. 1931; re-en. Sec. 5668.44, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1941; amd. Sec. 1, Ch. 175, L. 1957; R.C.M. 1947, 6-404(part); amd. Sec. 4, Ch. 130, L. 1995.

Provided by Montana Legislative Services

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 2
DATE 2/1/05
BILL NO. SB286

Foundation of the American Subcontractors Association

Contractors' Knowledge Quest Research Series

Retainage Practice in the Construction Industry

by
Dennis C. Bausman, PhD
Clemson University

November 2004

Foundation of the American Subcontractors Association, Inc.
1004 Duke Street
Alexandria, VA 22314-3588
Telephone: 703-684-3450 Fax: 703-836-3482
Email: info@contractorsknowledgenetwork.org
Web: www.contractorsknowledgenetwork.org

With over 1,000 respondents and a survey instrument containing 87 questions, approximately 90,000 data points were collected. The statistical analysis of the data included the calculation of descriptive statistics, means testing, and the testing of paired samples. All statistical testing of the data was performed to a level of significance of .05.

Current Retainage Practices

Subsequent to the section of the questionnaire soliciting general information on the organization, respondents were asked to indicate the retained percentages applicable on their projects and the frequency that they encountered alternative approaches. Table 2: Retainage Percentages by Category of Owner, tabulates the project frequency that owners utilized each of the itemized retained percentages.

As shown in Table 2, federal and state agencies imposed 10% retainage terms on only about one-fifth of their projects (20% & 16% respectively) whereas private owners withheld 10% retainage on more than half (56%) of their projects. Conversely, 63% of the federal respondents held no retainage while only 19% of the state and 15% of the private owners did not withhold retainage.

Table 2: Retained Percentages by Category of Owner

Retained Percentage	% @ Comp.	Fed (16)	State (78)	Private (18)
10% for the contract duration	10.0%	20%	16%	56%
10% till 50%, then 5% on the remainder	7.5%	7%	2%	3%
10% till 50%, then 0% on the remainder	5.0%	3%	22%	11%
5% for the contract duration	5.0%	6%	30%	15%
3.5% for the contract duration	3.5%		1%	
6% till 50% then 0% on the remainder.	3.0%		1%	
4% till 50% then 2% on the remainder	3.0%		1%	
5% till 50%, then 0% on the remainder	2.5%	1%	3%	
2.5% for the contract duration	2.5%		2%	
2.0% for the contract duration	2.0%		1%	
1.0% for the contract duration	1.0%		2%	
None	0%	63%	19%	15%
Average retained % during the project		3.26%	5.56%	7.59%

Table 2 also identifies the average percent retained over the life of their projects for each category of owner (assuming an equal distribution of contract billings). The average is 3.26% on Federal work, 5.56% on state projects, and 7.59% on private projects. Note that the average retained percentage increases as you move from federal work to projects at the state level. Also, private owners impose a significantly higher percentage of retainage than evidenced in public work.

These general trends, of increased retainage as you move to 'local' and private projects are quite evident in Figure 1. More than half of the projects for private owners had retainage of 10%. In addition, retainage of 5% or more at completion of the work was present on 85% of the private projects, 70% of the state projects, and only 36% of the Federal projects.

3

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 3
DATE 2/1/05
BILL NO. SB 286

Montana Contractors' Association
Suggested amendments to SB 286

1) page 1, strike lines 25 and 26
2) page 3, line 10: after "upon the," strike "substantial completion" insert "final acceptance."
3) page 3, line 11, after "contract," strike: remainder of line 11 and 12

MONTANA SENATE
2005 LEGISLATURE

ROLL CALL

BUSINESS AND LABOR

DATE 2/1/05

NAMES	PRESENT	ABSENT	EXCUSED
SEN. VICKI COCCHIARELLA (D), CHAIRWOMAN	X		
SEN. JOE TROPILA (D), VICE CHAIRMAN	X		
SEN. JOE BALYEAT (R)	X		
SEN. DUANE GRIMES (R)	X		
SEN. DAVE LEWIS (R)	X		
SEN. GLENN ROUSH (D)	X		
SEN. FRANK SMITH (D)	X		
SEN. CAROLYN SQUIRES (D)	X		
SEN. DONALD STEINBEISSER (R)	X		
SEN. BILL TASH (R)	X		
SEN. JON TESTER (D)			X
PAT MURDO, LSD	X		
ANNIE GLOVER, COMMITTEE SECRETARY	X		

MONTANA STATE SENATE
2005 LEGISLATURE

VISITOR REGISTER

BUSINESS AND LABOR

DATE 2/1/05 **BILLS BEING HEARD TODAY** SB 286, SB 299
SB 238, SB 239

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Del Lonnquist	495-9554	AARP	SB 238 239	X	
Karen Powell		SAO	SB 238/239	X	
Jacqueline Peremon	797-3381	Self	SB 239	X	
Terry Minow		MEA-MFT	SB 299	X	
John Tazan	4114-2042	Lottery	SB 238/239		
GARY FORRESTER		MT CONT ASSN	SB 286	X	
Keith Allen		IBEW	SB 286	X	
Alicia Pichette		SAO	SB 238 SB 239	X	
RUSS KATHERMAN		D&A (INFO)			
Margaret Morgan	431-9836	Treasure State IEC	SB 286	X	
Don Judge	459-1708	Teamsters Local 190	SB 299	X	
Carl Schwartz	443-8514	AS Am	SB 286	X	
Jacqueline Lenmark	2-0230	AIA	SB 238, 239		X
Larry Kibbee	360-9860 6925	PCI	SB 238		X
Greg Van Horssen	2-0230	State Farm	SB 238		X
Pat Melby	2-7450	Mt Med Assn	SB 238	✓	
Kathy McGowan	443-1570	MSPOA; MCAA	SB 238	✓	
WARD SHANAHAN	442-8660	INV. CO. INSTITUTE	SB 239	✓	
Betty Beverly	443-5341	MSCA	SB 238 239	X	
Bill Dove	581-1128	MPPA	SB 238 239	X	

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS, LABOR, AND ECONOMIC AFFAIRS

Call to Order: By **CHAIRMAN VICKI COCCHIARELLA**, on February 4, 2005 at 8:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:
Sen. Vicki Cocchiarella, Chairman (D)
Sen. Joe Balyeat (R)
Sen. Duane Grimes (R)
Sen. Dave Lewis (R)
Sen. Glenn Roush (D)
Sen. Frank Smith (D)
Sen. Carolyn Squires (D)
Sen. Donald J. Steinbeisser (R)
Sen. Bill Tash (R)
Sen. Joseph (Joe) Tropila (D)

Members Excused:
Sen. Jon Tester (D)

Members Absent: None.

Staff Present: Annie Glover, Committee Secretary
Pat Murdo, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:
Hearing & Date Posted: None.
Executive Action: SB 217, SB 238, SB 239, SB 274
SB 280, SB 286, SB 315, SB 329

Motion/Vote: SEN. SQUIRES moved that SB 239 BE AMENDED WITH SB023902.APM. Motion carried unanimously by voice vote.

EXHIBIT(bus28a09)

Motion/Vote: SEN. SQUIRES moved that SB 239 DO PASS AS AMENDED. Motion carried 6-5 by voice vote with SEN. BALYEAT, SEN. GRIMES, SEN. LEWIS, SEN. STEINBEISSER, and SEN. TASH voting no.

02:06:06 Break
02:30:00 Resume

02:30:07

EXECUTIVE ACTION ON SB 274

Motion: SEN. TROPILA moved that SB 274 DO PASS.

Discussion:

Mr. Steve Turkiewicz, Montana Bankers Association

Motion/Vote: SEN. STEINBEISSER moved that SB 274 BE AMENDED. Motion carried unanimously by voice vote.

Discussion:

Ms. Kristi Blazer, Montana Association of Mortgage Brokers

Motion/Vote: SEN. STEINBEISSER moved that SB 274 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

02:37:40

EXECUTIVE ACTION ON SB 280

Motion: SEN. SQUIRES moved that SB 280 DO PASS.

Discussion:

Substitute Motion/Vote: SEN. GRIMES made a substitute motion that SB 280 BE TABLED. Substitute motion carried unanimously by voice vote.

02:43:18

EXECUTIVE ACTION ON SB 286

Motion: SEN. SQUIRES moved that SB 286 DO PASS.

Discussion:

Motion: SEN. SQUIRES moved that SB 286 BE AMENDED WITH SB028601.APM.

EXHIBIT(bus28a10)

Discussion:

Vote: Motion carried unanimously by voice vote.

Motion/Vote: SEN. SQUIRES moved that SB 286 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

02:50:33

EXECUTIVE ACTION ON SB 315

Motion: SEN. SQUIRES moved that SB 315 DO NOT PASS.

Discussion:

Mr. Matthew Cohn, Montana State Fund

EXHIBIT(bus28a11)

Substitute Motion/Vote: SEN. TROPILA made a substitute motion that SB 315 BE TABLED. Substitute motion carried 6-5 by roll call vote with SEN. BALYEAT, SEN. GRIMES, SEN. LEWIS, SEN. STEINBEISSER, and SEN. TASH voting no.

SEN. COCCHIARELLA proxied for **SEN. TESTER.**

03:17:56

EXECUTIVE ACTION ON SB 329

Motion/Vote: SEN. SQUIRES moved that SB 329 DO PASS. Motion carried unanimously by voice vote.

SEN. COCCHIARELLA proxied for **SEN. TESTER.**

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 10
DATE 2/4/05
BILL NO. SB286

Amendments to Senate Bill No. 286
1st Reading Copy

Requested by Senator Don Ryan

For the Senate Business, Labor, and Economic Affairs Committee

Prepared by Pat Murdo
February 4, 2005 (10:34am)

1. Page 1, line 17.
Strike: "(a)"

2. Page 1, lines 25 through 26.
Strike: subsection (b) in its entirety

3. Page 3, line 10.
Following: "upon the"
Strike: "substantial completion"
Insert: "final acceptance"

4. Page 3, lines 11 through 12.
Following: "contract"
Strike: remainder of line 11 through "values" on line 12

- END -

MONTANA SENATE
2005 LEGISLATURE

ROLL CALL

BUSINESS AND LABOR

DATE 2/4/05

NAMES	PRESENT	ABSENT	EXCUSED
SEN. VICKI COCCHIARELLA (D), CHAIRWOMAN	X		
SEN. JOE TROPILA (D), VICE CHAIRMAN	X		
SEN. JOE BALYEAT (R)	X		
SEN. DUANE GRIMES (R)	X		
SEN. DAVE LEWIS (R)	X		
SEN. GLENN ROUSH (D)	X		
SEN. FRANK SMITH (D)	X		
SEN. CAROLYN SQUIRES (D)	X		
SEN. DONALD STEINBEISSER (R)	X		
SEN. BILL TASH (R)	X		X
SEN. JON TESTER (D)			
PAT MURDO, LSD	X		
ANNIE GLOVER, COMMITTEE SECRETARY	X		

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Business, Labor, and Economic Affairs** recommend that **Senate Bill 286** (first reading copy -- white) **do pass as amended.**

Signed: _____
Senator Vicki Cocchiarella, Chair

And, that such amendments read:

1. Page 1, line 17.
Strike: "(a)"

2. Page 1, lines 25 through 26.
Strike: subsection (b) in its entirety

3. Page 3, line 10.
Following: "upon the"
Strike: "substantial completion"
Insert: "final acceptance"

4. Page 3, lines 11 through 12.
Following: "contract"
Strike: remainder of line 11 through "values" on line 12

- END -

Committee Vote:
Yes 10, No 0.

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JIM KEANE**, on March 23, 2005 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Jim Keane, Chairman (D)
Rep. Kathleen Galvin-Halcro, Vice Chairman (D)
Rep. Joe McKenney, Vice Chairman (R)
Rep. Elsie Arntzen (R)
Rep. Bob Bergren (D)
Rep. Tim Dowell (D)
Rep. Kevin T. Furey (D)
Rep. Dave Gallik (D)
Rep. Ralph Heinert (R)
Rep. Llew Jones (R)
Rep. Mike Jopek (D)
Rep. Harry Klock (R)
Rep. Mike Milburn (R)
Rep. Don Roberts (R)
Rep. Dan Villa (D)

Members Excused:

Rep. Scott Mendenhall (R)
Rep. Wayne Stahl (R)
Rep. Jonathan Windy Boy (D)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Kyanne Kelly, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	SB 443, 3/16/2005; SB 434, 3/16/2005; SB 168, 3/16/2005; SB 286, 3/16/2005; SB 422, 3/16/2005
Executive Action:	SB 443, SB 168, SB 422, SB 286, HB 772, HB 664, SB 412, SB 354, SB 217, HJ 23

HEARING ON SB 443

Opening Statement by Sponsor:

SEN. GLENN ROUSH (D), SD 8, opened the hearing on **SB 443**, Auto insurance premium reductions for certain national guard members.
00:01:37

Proponents' Testimony:
00:05:25 Roger Hagen, National Guard of Montana
00:07:43 General Roger Mosley, National Guard of Montana

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
00:12:05

Closing by Sponsor:
00:13:24

HEARING ON SB 434

Opening Statement by Sponsor:

SEN. DAVE LEWIS (R), SD 42, opened the hearing on **SB 434**, Revise insurance form filing and approval law.
00:15:17

Proponents' Testimony:
00:18:06 Jacqueline Lenmark, American Insurance Association

Opponents' Testimony: None

Informational Testimony:
00:19:22 Alisa Pichette, State Auditors Office

Questions from Committee Members and Responses:
00:20:17

Closing by Sponsor:
00:30:08

HEARING ON SB 168

Opening Statement by Sponsor:

SEN. JEFF MANGAN (D), SD 12, opened the hearing on **SB 168,** Small business equity infusion act.
00:31:04

Proponents' Testimony:

00:37:22	Frank Cote, MSE Technology Corporation of Butte
00:38:07	Gary Forrester, Montana Contractors Association
00:38:37	Barbara Ranf, Montana Chamber of Commerce
00:39:07	Gary Amestoy, Richland County Development Corporation

Opponents' Testimony:

Informational Testimony:

00:40:29	Carroll South, Board of Investment

Questions from Committee Members and Responses:
00:44:40

Closing by Sponsor:
00:53:47

HEARING ON SB 286

Opening Statement by Sponsor:

SEN. DON RYAN (D), SD 10, opened the hearing on **SB 286,** Revise construction payment laws.
00:55:06
EXHIBIT(buh64a01)

Proponents' Testimony:

00:57:54	Carl Schweitzer, Subcontractors Association
01:04:26	Margaret Morgan, Treasure State Contractors
01:05:00	Gary Forrester, Montana Contractors Association

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
01:05:38

Closing by Sponsor:
01:12:07

REPS. MENDENHALL AND WINDY BOY entered the room.

HEARING ON SB 422

Opening Statement by Sponsor:

SEN. JOE BALYEAT (R), SD 34, opened the hearing on **SB 422**, Revise provisions regarding real estate appraiser trainees.
01:13:44
EXHIBIT(buh64a02)
EXHIBIT(buh64a03)

Proponents' Testimony: None

Opponents' Testimony:
01:22:34 Tim Moore, State Board of Real Estate Appraisers
EXHIBIT(buh64a04)
01:26:05 Jan Martin, Board of Real Estate Appraisers
01:26:32 Mike Joki, Real Estate Appraiser
01:27:32 Jim Campbell, Self

Informational Testimony:
01:30:33 Jim Brown, Department of Labor and Industry

Questions from Committee Members and Responses:
01:31:03

Closing by Sponsor:
01:41:40

EXECUTIVE ACTION ON SB 443

Motion: **REP. GALVIN-HALCRO moved that SB 443 BE CONCURRED IN.**

Discussion:
02:11:49

Without objection REP. GALVIN-HALCRO withdrew her motion that SB 443 BE CONCURRED IN.

EXHIBIT 1
DATE 3.23.05
SB 286

Explanation for SB 286

Senate Bill 286 as it was approved by the Senate has 2 basic parts

Section 2 Amendment

Section 28-2-2104 is a section of law that allows a general contractor or a subcontractor to charge interest if their payment for work is delayed by more than 30 days from the date the payment is required to be paid. The language which is stricken said that interest could only be charged and collected if the contractor notified the payer that this section of law exists – the section that allows interest to be charged.

I am removing the language of notifying those that owe payment, because the Montana Construction Payment laws have existed for over 6 years and those that owe money should now be well aware of the payment laws and should not have to be notified of their existence.

Also, in other sections of the Montana Construction Payment Act there is a specific timetable and process for owners to pay for construction work and to not pay for work that they have not approved. Therefore, if an owner has approved work and hasn't paid for it, then a general contractor or a subcontractor should be able to collect interest on delayed payment.

Section 3 Amendment and new subsection

The amendment in the first subsection changes the amount of retainage that can be held on a construction project from 10% to 5%. About 6 years ago the legislature passed a legislation setting retainage on public works at 5%. The amendments in this subsection set the maximum retainage on private work and other public works that fall under this act at 5%. Only residential construction projects which are $400,000 or less in value are excluded from this act

The new language in subsection 3, says when retainage should be paid. Basically, when the owner has accepted each portion of the work then the retainage must be paid. Currently, most owners wait until the entire project is completed and then pays retainage. For some subcontractors who completed their work months and some times years in advance of a construction project being completed, the wait for retainage payment can be a long and painful experience. It is long and painful because retained funds are the contractors profit on the job or they still need to pay off an operating or equipment loan.

Both the change to 5% and the subsection that requires that retainage be paid when a contractors work is done, are designed to help the cash flow of Montana contractors and keep them financially sound.

Section 1 of the bill was taken out by the Senate upon agreement of both the general contractors and the subcontractors.

EXECUTIVE ACTION ON SB 168

Motion: REP. GALVIN-HALCRO moved that SB 168 BE CONCURRED IN.

Discussion:
02:13:29

Vote: Motion failed 6-12 by roll call vote with REP. BERGREN, REP. DOWELL, REP. FUREY, REP. JONES, REP. JOPEK, and REP. WINDY BOY voting aye. REP. STAHL voted by proxy.

Motion/Vote: REP. VILLA moved that SB 168 BE TABLED AND THE VOTE REVERSED. Motion carried by voice vote.

EXECUTIVE ACTION ON SB 422

Motion: REP. MENDENHALL moved that SB 422 BE CONCURRED IN.

Discussion:
02:17:09

Vote: Motion failed 5-13 by roll call vote with REP. DOWELL, REP. GALLIK, REP. HEINERT, REP. MENDENHALL, and REP. WINDY BOY voting aye. REP. STAHL voted by proxy.

Motion/Vote: REP. VILLA moved that SB 422 BE TABLED AND THE VOTE REVERSED. Motion carried by voice vote.

EXECUTIVE ACTION ON SB 286

Motion: REP. GALVIN-HALCRO moved that SB 286 BE CONCURRED IN.

Discussion:
02:23:35

Vote: Motion carried unanimously by voice vote. REP. STAHL voted by proxy. REP. GLAZER to carry.

EXECUTIVE ACTION ON HB 772

Motion: REP. GALVIN-HALCRO moved that HB 772 DO PASS.

Motion: REP. GALVIN-HALCRO moved that HB 772 BE AMENDED.

HOUSE OF REPRESENTATIVES
Roll Call
BUSINESS AND LABOR COMMITTEE

DATE 3-23-05

NAME	PRESENT	ABSENT	EXCUSED
REP. JIM KEANE, CHAIR.	✓		
REP. KATHLEEN GALVIN-HALCRO, VICE CHAIR	✓		
REP. JOE McKENNEY, VICE CHAIR	✓		
REP. ELSIE ARNTZEN	✓		
REP. BOB BERGREN	✓		
REP. TIM DOWELL	✓		
REP. KEVIN FUREY	✓		
REP. DAVE GALLIK	✓		
REP. RALPH HEINERT	✓		
REP. LLEW JONES	✓		
REP. MIKE JOPEK	✓		
REP. HARRY KLOCK	✓		
REP. SCOTT MENDENHALL			✓
REP. MIKE MILBURN	✓		
REP. DON ROBERTS	✓		
REP. WAYNE STAHL			✓
REP. DAN VILLA	✓		
REP. JONATHAN WINDY BOY			✓

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HOUSE STANDING COMMITTEE REPORT

March 23, 2005

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **Senate Bill 286** (third reading copy -- blue) **be concurred in**.

Signed: _____
Representative Jim Keane, Chair

To be carried by Representative Bill Glaser

- END -

Committee Vote:
Yes 18, No 0.

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3/23/05

VISITORS REGISTER

Montana
House of Representatives
Business & Labor Committee

Bill Number: SB 286 Date: 3/23/05

Please print ~ Please print ~ Please print ~ Please print

Name	Representing	Support	Oppose	Informational
Carl Schweitzer	ASAM	✓		
Gary Forrester	MT Contractors	X		
Margaret Morgan	Treasure State IEC	X		

Please leave prepared testimony with Committee Secretary. Witness Statement forms are available if you care to submit written testimony.